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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEN WALTERS, JOHN BONILLA, in their  
respective capacities as Trustees of the  
OPERATING ENGINEERS HEALTH AND  
WELFARE TRUST FUND, PENSION  
FUND FOR OPERATING ENGINEERS,  
PENSIONED OPERATING ENGINEERS  
HEALTH AND WELFARE FUND,  
OPERATING ENGINEERS VACATION  
AND HOLIDAY TRUST FUND,  
NORTHERN CALIFORNIA  
PREAPPRENTICE, APPRENTICE AND  
JOURNEYMAN AFFIRMATIVE ACTION  
TRAINING FUND, OPERATING  
ENGINEERS CONTRACT  
ADMINISTRATION FUND FOR  
NORTHERN CALIFORNIA, OPERATING  
ENGINEERS INDUSTRY STABILIZATION  
TRUST FUND AND OPERATING  
ENGINEERS MARKET PRESERVATION  
TRUST FUND,

Plaintiffs,

v.

STATEWIDE CONCRETE BARRIER, INC.,  
a California corporation; and CHARLES  
WELLS, an Individual,

Defendants.

Case No.: C-04-2559 JSW (MEJ)

DECLARATION & APPLICATION FOR  
EXTENSION OF TIME TO FILE  
SUPPLEMENTAL BRIEF ON DAMAGES IN  
SUPPORT OF MOTION FOR DEFAULT  
JUDGMENT

BRUCE K. LEIGH, being first duly sworn, deposes and declares as follows:

1. I am an associate of the law firm of Stanton, Kay & Watson, LLP, counsel to Plaintiffs  
KEN WALTERS and JOHN BONILLA, in their respective capacities as Trustees of the

1 OPERATING ENGINEERS TRUST FUNDS, plaintiffs in the above-referenced action.

2 2. I have personal knowledge of the foregoing and, if called upon to testify, am competent  
3 to do so.

4 3. Defendants STATEWIDE CONCRETE BARRIER, INC., and CHARLES WELLS were  
5 served with process on December 9, 2004. Neither responded, and upon plaintiffs' request, the  
6 default of defendants was entered on January 18, 2005. On February 9, 2005, plaintiffs filed and  
7 served their motion for default judgment and supporting papers. The matter was assigned to  
8 Magistrate Judge Maria Elena-James, who issued her report and recommendation on September 2,  
9 2005, that the motion be granted but that plaintiffs be asked to submit a supplementary declaration  
10 proving the amount of damages. On September 20 the court adopted that report and  
11 recommendation, setting a date of November 18, 2005, for filing of the supplemental brief.

12 4. Unfortunately, plaintiffs' counsel overlooked the court's order in this case when the  
13 attorney to whom the case had been assigned, Ms. Kirkpatrick, left the firm shortly after the court's  
14 order.

15 **REQUEST FOR EXTENTION OF TIME TO FILE SUPPLEMENTARY BRIEF**

16 5. Based on the above, plaintiffs counsel apologizes for its oversight and request that the  
17 court grant an extension of time to February 8, 2006, to file and serve their supplementary brief on  
18 damages in support of their motion for default judgment.

19 I declare under penalty of perjury that the foregoing is true and correct. Executed at  
20 San Francisco, California this 14<sup>th</sup> day of December, 2005.

21 By Bruce K. Leigh  
22 Bruce K. Leigh  
23 Attorneys for Plaintiffs

24 IT IS SO ORDERED: Plaintiffs shall have until January 20, 2006, to file their  
25 supplementary brief on damages in support of their motion for default judgment herein.

26 DATED: December 15, 2005

27 Jeffrey S. White  
Hon. Jeffrey S. White  
United States District Judge

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